NO. 90-290

In The
Supreme Court of the United States

OCTOBER TERM, 1990

DR. BILLY RAY EUBANKS

Petitioner

versus

GETTY OIL COMPANY, TEXACO, INC.
and TEXACO PRODUCING, INC.

Respondents

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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QUESTION PRESENTED

Is a federal antitrust claim for damages barred by collateral estoppel, based on a prior state oil and gas administrative proceeding, where the issue involved could not have been decided in the prior proceeding, the procedures in the two proceedings are substantially different, and state law specifically recognized the right to pursue claims for monetary damages in a separate judicial proceeding?

LIST OF PARTIES

The parties to the proceedings below were the petitioner, Dr. Billy Ray Eubanks, and the respondents, Getty Oil Company, Texaco, Inc., and Texaco Producing, Inc. The same are the parties before this Court.

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

The petitioner, Dr. Billy Ray Eubanks, respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit, entered in the above-entitled proceeding on May 29, 1990.

OPINIONS BELOW

The opinion of the Court of Appeals for the Fifth Circuit is reported at 896 F.2d 960, and is reprinted in the appendix hereto, p.1a, *infra*. The district court did not issue written reasons for its judgment.

JURISDICTION

Invoking Federal jurisdiction under 15 U.S.C. §15, the petitioner brought this suit in the Eastern District of Louisiana. On April 4, 1989, the district court granted summary judgment in favor of respondents.

On petitioner's appeal, the Fifth Circuit on March 22, 1990, affirmed the district court. See p. 10a, *infra*. Petitioner's petition for rehearing was denied on May 17, 1990. See p. 14a, *infra*. Judgment was entered on May 29, 1990. See p. 12a, *infra*.

The jurisdiction of this Court to review the judgment of the Fifth Circuit is invoked under 28 U.S.C. §1254(1).

STATUTES INVOLVED

The statutes involved in this matter are 15 U.S.C. §2, Ala. Code §9-17-15, and Ala. Code §9-17-19, which are reproduced in the appendix hereto, pp. 15a-17a, *infra*.

STATEMENT OF THE CASE

Petitioner, Dr. Billy Ray Eubanks ("Eubanks"), is the owner of an 8.333% working interest in a gas/condensate well located in the Hatter's Pond Field in Mobile County, Alabama. In 1988, he instituted this action for damages under the federal antitrust laws, pursuant to 15 U.S.C. §2. The complaint alleged that Getty Oil Company ("Getty") violated §2 of the Sherman Act by exercising its monopoly power and fraudulently obtaining an order from the State Oil and Gas Board of Alabama ("the Board") requiring the inclusion of Eubanks' interest in a conservation unit.

The Hatter's Pond Field has been described as a "billion dollar field". Almost all of the gas/condensate wells in the Hatter's Pond Field are owned and operated by Getty and/or its successor, Texaco, Inc. ("Texaco"). Texaco owns approximately 84% of the working interest in the well in which Eubanks has his interest, and Texaco is the operator of all of the wells in the Hatter's Pond Field.

In 1982, Getty petitioned the Board for the formation of a unit in the Hatter's Pond Field. The petition sought to require owners of mineral interests within the field to "unitize, pool and integrate their interests and develop their lands or interests within the Unit Area as one single unit. . . ." Fieldwide, or poolwide, unitization requires an interest owner in one well to give up that interest for a smaller interest in the production of all wells in the unit based on the relative values of the wells. Ala. Code §9-17-83.

Throughout the unitization proceedings, AMAX (Eubanks' predecessor) was an involuntary party to the proceedings and challenged Getty's request for unitization. In particular, AMAX opposed the unitization on the grounds that the well in which AMAX held an interest was in a separate mappable reservoir from some of the other wells which would not contribute to the Unit. Allocations to lands which would not contribute had the effect of "watering down" or "diluting" the participation in the producing wells.

Getty agreed before the Board to produce to AMAX and others certain well files that purportedly contained documents showing Getty's evaluation of the wells in the Hatter's Pond Field. However, before allowing review of the files, Getty sanitized them by removing incriminating evidence, asserting that the information in the documents was proprietary. Getty neglected to remove three documents generated by Getty employees which indicated that other documents taken from the files showed that Getty had known for at least seven years that Hatter's Pond Field was not a homogeneous reservoir and that the proposed unit allocation formula was wholly contrary to the information which Getty possessed but did not reveal to the Board.

Despite repeated efforts by AMAX to obtain these documents from Getty, the Board declined to make any decision

regarding the production of the requested documents until 1984, when the Board granted Getty's petition for unitization. In its decision, the Board attempted to justify its decision not to order production of the documents prior to approving unitization on the grounds that "[t]he information that Getty Oil Company refused to provide those parties is not necessary to determine the issues presented before the board."

AMAX filed a petition for judicial review in the Circuit Court for Mobile County, Alabama, requesting that the court reverse the Board's decision and instruct the Board to afford AMAX due process with respect to discovery. The Alabama circuit court invalidated the Unit approved by the Board and remanded the matter for further proceedings. As required by Alabama law, the circuit court reached its decision without taking new evidence, relying solely on the record created before the Board. The court based its review of the Board's decision on those provisions of Alabama law which limit review to consideration of whether the Board's order was reasonable and supported by the evidence.

The circuit court's decision was reversed by the Court of Civil Appeals of Alabama on January 14, 1987. *State Oil and Gas Board of Alabama v. Anderson*, 510 So.2d 250 (Ala. Civ. App. 1987). The appeals court concluded that the Board's decision was reasonable and supported by the evidence, and that there was no violation of procedural due process in denying AMAX access to Getty's documents.

Certiorari was subsequently denied by the Alabama Supreme Court and this Court. *Anderson v. State Oil and Gas Board of Alabama*, 484 U.S. 955 (1987).

In the suit now before this Court, Eubanks claims that Getty misrepresented to the Board, and omitted from presentation to the Board, material information in Getty's exclusive

possession which was necessary for a determination of whether the unitization as proposed was appropriate. These misrepresentations and omissions may be generally categorized as relating to whether or not the Hatter's Pond Field consisted of only one reservoir.

Getty's monopoly interest in the Hatter's Pond Field gave Getty a monopoly of all information related to the field. Getty misused its monopoly position to pick and choose the information it "permitted" the Board to see in order to gain for itself an unfair allocation of production and, as a result, reduce the revenue which Eubanks should receive. Based on the Fifth Circuit's holding in *Woods Exploration and Producing Co. v. Aluminum Co. of America*, 438 F.2d 1286 (5th Cir. 1971), *cert. denied*, 404 U.S. 1047 (1972), such misuse of monopoly power is a violation of §2 of the Sherman Act.

Getty moved for summary judgment on the grounds of res judicata and collateral estoppel, alleging that the issue of Getty's misrepresentations and omissions had been decided in the state proceedings. The federal district court granted the motion on the ground of collateral estoppel. Judgment was entered on April 4, 1989, and Eubanks appealed.

The Court of Appeals affirmed the district court's judgment. The Circuit Court held that "[t]he Alabama court has adjudicated that Getty did not submit false and misleading information to the Board and that the information Getty withheld was not material." 896 F.2d at 964. Therefore, the court held that Eubanks was collaterally estopped from relitigating the fraud, and that his antitrust claim was properly dismissed.

On May 17, 1990, the Circuit Court denied Eubanks' petition for rehearing, and judgment was entered on May 29, 1990.

REASONS FOR GRANTING THE WRIT

The Fifth Circuit's decision improperly precluded a federal antitrust proceeding based on a prior state administrative proceeding. The Fifth Circuit's decision conflicts with decisions of this Court, the Second, Eighth and Tenth Circuits, and the public policies embodied in the Sherman Act.

The issue presented to this Court is whether a state administrative proceeding can bar a federal antitrust claim, based on collateral estoppel. The Fifth Circuit's decision in this case is the first case to reach that result. Accordingly, the Fifth Circuit has ruled that collateral estoppel bars a federal antitrust claim, even though state administrative proceedings could not bar such a claim under the principle of res judicata, because the state tribunal has no jurisdiction to determine federal antitrust claims. *See Marrese v. American Academy of Orthopaedic Surgeons*, 470 U.S. 373, 383 (1985). The Fifth Circuit has therefore reached an end result with respect to the ultimate issue, under collateral estoppel, even though res judicata would be inapplicable because of the lack of state jurisdiction.

The result reached by the Fifth Circuit is in even more serious error in view of the statutory intent not to have the administrative proceeding bar damage claims. In applying collateral estoppel, the Fifth Circuit's decision conflicts with the decisions of three other circuits, *Richardson v. Phillips Petroleum Co.*, 791 F.2d 641, *reh'g denied*, 799 F.2d 427 (8th Cir. 1986), *cert. denied*, 479 U.S. 1055 (1987), *Tidewater Oil Co. v. Jackson*, 320 F.2d 157 (10th Cir.), *cert. denied*, 375 U.S. 942 (1963), and especially *Lyons v. Westinghouse Corp.*, 222 F.2d 184 (2nd Cir.), *cert. denied*, 350 U.S. 825 (1955).

In determining whether or not issues decided in state proceedings will have a preclusive effect on later federal proceedings, the law of the state in which the judgment was obtained must be examined. *Migra v. Warren City School District Board of Education*, 465 U.S. 75, 81 (1984). Under Alabama law, the "requirements for collateral estoppel to operate are 1) issue identical to one involved in previous suits; 2) issue actually litigated in prior actions; and 3) resolution of the issue was necessary to the prior judgment." *Wheeler v. First Alabama Bank of Birmingham*, 364 So.2d 1190, 1199 (Ala. 1978).

In order to determine whether the identical issues were litigated and decided in this matter, it is necessary to determine exactly what the issues were. It is clear that the antitrust and fraud issues were not tried in the Alabama administrative proceedings. The basic issue presented to the Federal district court was whether Getty abused its monopoly power, and misrepresented to, or withheld from the Board, relevant information regarding the geological make-up of the Hatter's Pond Field. Since the Board approved the unit without ever requiring discovery of all of the relevant documents, it is clear that the issue of whether documents were contradictory to the evidence presented by Getty was not and could not have been litigated or decided in the Alabama proceedings. The findings by the Alabama Board were all based on Getty's representations about the evidence withheld—not on any knowledge of what the withheld documents contained.

What is most important is what *would not* appear in the record, *i.e.*, the documents themselves which will show the extent of the fraud involved. The Alabama courts were precluded from reviewing such information because the courts' review of the Board's order was restricted to the administrative record and that information was not in the record. A matter cannot be litigated or decided when there was no evidence allowed with respect to the issue.

Even if the identical issue of fraud was litigated in the state administrative proceedings, resolution of the issue of fraud must have been necessary to the judgments in those proceedings. Implicit in this requirement is that the issue of fraud must have been actually decided in the prior proceedings. *See Brown v. Felsen*, 442 U.S. 127, 139 n.10 (1979) ("collateral estoppel treats as final only those questions necessarily decided in a previous suit"); *Carlile v. Phenix City Board of Education*, 849 F.2d 1376, 1378 (11th Cir. 1988) (applying Alabama law).

In appeals to the Alabama courts from Board orders, the issues and evidence which can be considered by the courts are limited by statute. Alabama Code §9-17-15 allows an aggrieved party to test the validity of any rule, regulation or order issued by the Board, but limits the scope of the circuit court's inquiry to the "record of the proceedings before the Board, and no new or additional evidence shall be received."

Alabama law also specifically provides that an action before the Board will not preclude a civil action for damages. Ala. Code §9-17-19(a).

The Eighth Circuit has comprehensively addressed the collateral estoppel issue under procedures virtually identical to those provided for under Alabama law, where restrictions are placed on an oil and gas board's powers under state law. In *Richardson v. Phillips Petroleum Co.*, 791 F.2d 641, *reh'g denied*, 799 F.2d 427 (8th Cir. 1986), *cert. denied*, 479 U.S. 1055 (1987), the Arkansas Oil and Gas Commission had authorized the defendants to establish a unit for the purpose of secondary recovery, conditioned on operation of the unit without endangering production from neighboring operations. Plaintiffs sought relief from the Commission, claiming that the productivity of their wells decreased.

The Commission found that plaintiffs had not proved damage to their wells, and the Arkansas state district court affirmed the Commission's findings.

Plaintiffs sued in the Arkansas Federal district court for compensatory and punitive damages under theories of trespass, nuisance and negligence. The district court granted partial summary judgment for defendants on the ground of collateral estoppel.

On appeal, the Eighth Circuit reversed. The court found that "the district court erred in failing to conclude that there is not a sufficient identity of issues between those distinctly litigated and necessarily decided in the Commission hearings and the issues raised in the state law proceedings to allow application of the collateral estoppel doctrine. . . ." 791 F.2d at 644.

In determining that the issues adjudicated before the Commission and in the subsequent court action were substantially different, the Eighth Circuit noted that "[i]t is well recognized that when a legislature's scheme of remedies demonstrates that the proceedings in an administrative tribunal are determinative only for purposes of the controversy before the agency, the rule governing issue preclusion does not apply," and that the Arkansas statutory scheme limited the Commission to the issues before it so that the Commission could not adjudicate or award monetary damages. 791 F.2d at 644. The Eighth Circuit also considered "the weight given the facts in each proceeding and the applicable proof burdens." 791 F.2d at 645. Finding the statutory constraints on the Commission's powers particularly important, and recognizing the incompatible legal concepts and procedural differences between the Commission and the courts, the Eighth Circuit found "more than a de minimis

difference between the issues raised and the weight to be given the facts in the two actions" and held that collateral estoppel did not bar plaintiffs' suit. 791 F.2d at 646-47.

The same result was reached by the Tenth Circuit in *Tidewater Oil Co. v. Jackson*, 320 F.2d 157 (10th Cir.), *cert. denied*, 375 U.S. 942 (1963). The Jacksons sued Tidewater in federal court, alleging compensatory and exemplary damages as a result of Tidewater's oil recovery project. Tidewater defended on the ground of estoppel, alleging that the same issues had previously been litigated before the Kansas Commission. The Tenth Circuit found that the Jacksons' claim was not barred by collateral estoppel, stating:

> [N]o one claims that the Commission is empowered to determine Tidewater's tort liability for such conduct. That matter was specifically left to a court of competent jurisdiction. And, "(w)here a court incidentally determined a matter which it would have had no jurisdiction to determine in an action brought directly to determine it, the judgment is not conclusive in a subsequent action brought to determine the matter directly." Restatement of the Law of Judgments, §71; and *see*: Harvard Law Rev. Vol. 56, p.1, 18. It is wholly inadmissible and incompatible with fundamental principles of due process to hold that a tribunal, possessing no power to adjudge tort liability, may nevertheless deprive a tort claimant of his day in court on that issue, by conclusive adjudication of the operative facts upon which his claim must rest.

The *Richardson* and *Tidewater* opinions established two basic principles: collateral estoppel will not apply (1) where there are significant procedural differences between the two proceedings or (2) where the statutory scheme under which the administrative body is operating contemplates that the body's decision will not preclude assertion of a second claim.

These principles are consistent with this Court's statement in *Parklane Hosiery Co. v. Shore*, 439 U.S. 322, 331-32 (1979) that "differences in available procedures may sometimes justify not allowing a prior judgment to have estoppel action even between the same parties. . ." These principles have also been specifically incorporated into the Restatement (Second) of Judgments.

Restatement (Second) of Judgments §28(a) (1982) provides that issue preclusion does not apply where "[t]he party against whom preclusion is sought had a significantly heavier burden of persuasion with respect to the issue in the initial action than in the subsequent." This Court has repeatedly recognized this principle in actions involving prior criminal and subsequent civil proceedings based on the differences in the evidentiary standards. *U.S. v. One Assortment of 89 Firearms*, 465 U.S. 354, 362 (1984); *One Lot Emerald Cut Stones v. U.S.*, 409 U.S. 232, 235 (1972). The appellate courts have also applied this principle in civil cases involving different standards of proof. *See Richardson*, 791 F.2d at 645 (discussed *supra*); *Wilcox v. First Interstate Bank of Oregon, N.A.*, 815 F.2d 522, 531 (9th Cir. 1987) (clear and convincing standard for fraud claim versus preponderance of the evidence standard for RICO claim).

Restatement (Second) of Judgments §83(4) (1982) provides that "[a]n adjudicative determination of an issue by an administrative tribunal does not preclude relitigation of that issue in another tribunal if according preclusive effect

to determination of the issue would be incompatible with a legislative policy that: (a) The determination of the tribunal adjudicating the issue is not to be accorded subsequent proceedings, or (b) The tribunal in which the issue subsequently arises be free to make an independent determination of the issue in question."

Applying these principles to the present case, it is clear that collateral estoppel cannot be applied. The issues and procedures in the Alabama administrative proceedings were entirely different from those applicable in the present case. Under Ala. Code §9-17-15, the Board's unitization order was prima facie valid, and no evidence other than that presented before the Board could be considered by the courts. In the present case, Eubanks is entitled to broad discovery under the Federal Rules of Civil Procedure to produce the evidence in support of his claim. This substantial variance in the applicable procedures and the weight to be given the evidence, makes collateral estoppel inapplicable.

Furthermore, it is equally clear that the identical issue was not actually tried in the Alabama administrative proceedings. The statutory scheme established under the Alabama Code specifically preserves the right of an aggrieved party to pursue damage claims against the other parties to those proceedings. Ala. Code §9-17-19(a). The Alabama Code specifically recognizes causes of action separate and distinct from actions for judicial review of an order of the Board and therefore falls within the ambit of Restatement (Second) of Judgments §83, and the *Richardson* and *Tidewater* cases. Eubanks should not be prevented by the application of collateral estoppel from asserting a federal antitrust claim.

Ironically, whereas *Richardson* and *Tidewater* refused to apply collateral estoppel to state tort claims, the Fifth Circuit has gone even further in the opposite direction and

applied collateral estoppel to an exclusively federal claim. To allow a state court administrative proceeding to preclude a federal antitrust claim under these circumstances would subvert the basic policies of the Sherman Act.

"Antitrust laws in general, and the Sherman Act in particular, are the Magna Carta of free enterprise. They are as important to the preservation of economic freedom and our free-enterprise system as the Bill of Rights is to the protection of our fundamental personal freedoms." *United States v. Topco Associates, Inc.*, 405 U.S. 596, 610 (1972).

In *Lyons v. Westinghouse Electric Corp.*, 222 F.2d 184 (2nd Cir.), *cert. denied*, 350 U.S. 825 (1955), the Second Circuit refused to permit state proceedings to bar an antitrust claim. In finding that collateral estoppel did not apply, Judge Hand stated:

> In the case at bar it appears to us that the grant to the district courts of exclusive jurisdiction over the action for treble damages should be taken to imply an immunity of their decisions from any prejudgment elsewhere; at least on occasions, like those at bar, where the putative estoppel includes a whole nexus of facts that make up the wrong. . . . There are sound reasons for assuming that such recovery should not be subject to the determinations of state courts. It was part of the effort to prevent monopoly and restraints of commerce; and it was natural to wish it to be uniformly administered, being national in scope. . . . Obviously, an administration of the Acts, at once effective and uniform, would best be accomplished by an untrammeled jurisdiction of federal courts.

To allow any result other than that proposed by Judge Hand would be particularly egregious in a case, such as this, in which a plaintiff was forced to litigate in the State forum by the very defendant who is guilty of fraud and antitrust violations.

The basic issue presented to the Federal district court was whether Getty misrepresented to, or withheld from the Board, relevant information regarding the geological make-up of the Hatter's Pond Field. Since the Board determined to approve the Unit without ever requiring the discovery of these relevant documents, the issue of whether these documents were contradictory to the evidence presented by Getty was not and could not have been litigated in the Alabama proceedings.

No court has ever, nor could it have under the Alabama statutory scheme, addressed the issue of whether the documents sought to be produced prove fraud.

CONCLUSION

The United States Court of Appeals for the Fifth Circuit erred in holding that the decisions reached in Alabama administrative proceedings collaterally estopped Eubanks' antitrust claim. Writ of certiorari should issue to correct the decision of the Court of Appeals.

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Billy Ray EUBANKS,
Plaintiff-Appellant,

v.

GETTY OIL COMPANY, et al.,
Defendants-Appellees.

No. 89-3268.

United States Court of Appeals,

Fifth Circuit.

March 22, 1990.

Owner of working interest in gas/condensate well brought antitrust claim against successor in interest to owner of 95% of total working interest in gas field. The United States District Court for the Eastern District of Louisiana, Morey L. Sear, J., entered summary judgment in favor of defendant, and appeal was taken. The Court of Appeals, Jerre S. Williams, Circuit Judge, held that for collateral estoppel purposes, issues raised before state court and those raised in federal antitrust action were identical.

Affirmed.

1. **Federal Courts KEY 420**

Federal court determining preclusive effect of prior state court judgments must apply law of state from which judgment emerged.

2. **Judgment KEY 715(1), 720, 724**

Under Alabama law, judgment operates as collateral estoppel if issue in question is identical to one involved in previous suit, issue actually was litigated in prior action, and resolution of issue was necessary to prior judgment.

3. **Judgment KEY 828(3.39)**

For collateral estoppel purposes, issues raised before state court by holder of working interest in gas/condensate well and those raised in federal antitrust action were identical, where both claims were based on contention that owner of 95% of total working interest in gas field had withheld material information from Alabama State Oil and Gas Board and submitted misleading information to Board in applying for unitization.

4. **Judgment KEY 720**

Under Alabama law, issue was actually litigated for collateral estoppel purposes if judgment is not based on default, stipulation or consent.

Appeal from the United States District Court for the Eastern District of Louisiana

Before CLARK, Chief Judge, and RUBIN and WILLIAMS, Circuit Judges.

JERRE S. WILLIAMS, Circuit Judge:

In this case we are called upon to decide whether a decision of an Alabama court upholding a state agency's order

unitizing a gas field operates as a collateral estoppel to preclude appellant's antitrust claim.

I. *Facts and Prior Proceedings*

Appellant Eubanks owns an 8.333 percent working interest in a gas/condensate well in the Hatter's Pond Field in Mobile County, Alabama.[1] Texaco, Inc., successor to Getty Oil Co., owns approximately 95 percent of the total working interest in the field.[2] Texaco currently operates all the wells in the field.

On May 31, 1982, Getty petitioned the Alabama State Oil and Gas Board (the "Board") for unitization of the Hatter's Pond gas field. Getty claimed unitization was necessary to effect secondary recovery of gas from the field. The Board has its own staff of geologists and petroleum engineers and makes decisions based on independent analyses of geological data submitted by well operators. The Board conducted hearings on Getty's unitization plan. Several owners of interests in the field, including appellant, challenged Getty's proposed participation formula. Appellant and others also objected to Getty's proposed inclusion of their properties in the unit. In July, 1983, the Board rejected Getty's unitization petition and directed Getty to develop a different participation formula.

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1. Eubanks acquired his interest from Amax Petroleum after the unitization process began. Amax, however, is not involved in the present appeal and Eubanks apparently has succeeded to all of Amax' interest. Throughout this opinion, therefore, we refer only to Eubanks, even where the actual actor may have been Amax.

2. Texaco likewise acquired its interest from Getty Oil Company after the unitization process began.

Getty filed a second unitization petition in February, 1984. The Board held additional hearings. Appellant and others again objected, this time claiming that Getty was withholding relevant documents from the Board. Appellant asked the Board to compel further discovery.

Because Getty operated most or all of the wells in the field, Getty was in possession of virtually all of the geological data about the field. The Board initially refused to permit appellant to conduct discovery of Getty's files. An Alabama Circuit Court eventually issued a writ of mandamus requiring the Board to permit such discovery. Getty responded by producing files that appellant claims were "sanitized." Further, these files contained three documents that appellant claims indicated that other documents that Getty had removed from the files would prove that appellant's well should not have been included in the unit. These non-disclosed documents were the subject of appellant's request for additional discovery. Getty claims that the documents appellant sought were "confidential, internal, interpretive [sic] evaluations." Getty claims that the raw data underlying these interpretative documents had been provided to the Board. In fact, it appears that "thousands" of pages of documents had been produced.

On October 9, 1984, the Board granted Getty's petition for unitization. The Board also rejected appellant's request for additional discovery noting that:

> [T]he Board has been provided with ample information and sufficient data to make a decision on the Petitions presently before it. . . . [V]oluminous amounts of information and data have been produced during these hearings . . . , and the previous hearings . . . , and all parties involved in all of

> these proceedings have been afforded an opportunity to examine all pertinent information and data relating to the unitization of the Hatter's Pond Field. . . . The information that Getty refused to provide [appellant] is not necessary to determine the issue presented before the Board. . . . [T]o the extent not already complied with, the discovery requests of [appellant] are unreasonable, untimely, will result in waste, and will not protect the coequal and correlative rights of all the mineral interest owners in the proposed Hatter's Pond Field Unit.

On November 5, 1984, appellant and others filed suit in Alabama state circuit court challenging the Board's unitization order. Appellant alleged that Getty's disclosures were inadequate and its failure to disclose amounted to fraud. The failure to disclose, it was claimed, resulted in the Board's ordering an improper unitization. The court rejected the fraud contention, noting that there was no evidence to support the claim. On the ultimate issue of the Board's decision, however, the court reversed the Board remanding the case to the Board for discovery of "reasonably relevant" evidence and for further consideration of the order.

The Circuit Court's decision was reversed on appeal. *State Oil and Gas Board v. Anderson*, 510 So.2d 250 (Ala.Civ.App. 1987), *cert. denied*, 510 So.2d 250 (Ala. 1987), *cert. denied*, 484 U.S. 955, 108 S.Ct. 348, 98 L.Ed.2d 374 (1987). The Alabama appellate court held that the Board's decision was reasonable and was supported by the evidence. 510 So.2d at 254-55. The court also held that the additional information sought by Eubanks "would have been merely cumulative" of Eubanks' other evidence in opposition to the unit. *Id.* at 256. The denial of certiarari by the United States Supreme Court ended the litigation in that case.

In December, 1988, appellant filed this suit in Federal District Court claiming that Getty and its successor in interest, Texaco, violated the Sherman Act, 15 U.S.C. § 2, in their efforts to secure unitization of the Hatter's Pond gas field. Appellees Texaco and Getty filed a motion for summary judgment on the grounds of res judicata and collateral estoppel. The district court granted appellee's motion for summary judgment, holding that appellant's claim was barred by collateral estoppel. Appellant filed a timely notice of appeal.

II. *Collateral Estoppel*

[1, 2] A federal court determining the preclusive effect of prior state court judgments must apply the law of the state from which the judgment emerged. *Scott v. Fort Bend County*, 870 F.2d 164, 167 (5th Cir.1989). The judgment given preclusive effect by the district court issued from an Alabama state court. In Alabama, a judgment operates as collateral estoppel if: (1) the issue in question is identical to one involved in the previous suit, (2) the issue actually was litigated in the prior action, and (3) resolution of the issue was necessary to the prior judgment. *Timmons v. Central Bank of the South*, 528 So.2d 845, 847 (Ala.1988).[3]

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3. In some cases, the Alabama Supreme Court specifies that collateral estoppel requires a fourth element, identical parties. *See, e.g. Pierce v. Rummell*, 535 So.2d 594, 596-97 (Ala.1988), and *Campbell v. Campbell*, _____ So.2d _____ No. 88-1213 (Ala. Dec. 29, 1989) (enumerating the three standard elements and specifying that these three elements must exist "between the same parties"). Even if Alabama law requires identity of parties for collateral estoppel, however, it is undisputed that appellant is Amax' successor in interest. As a privy to the earlier litigation, appellant satisfies the identity of parties requirement.

A. *Identical Issues*

[3] In his appeal before the Court of Civil Appeals of Alabama, Eubanks alleged that the Board denied Eubanks' due process rights when the Board refused to order production of three documents withheld by Getty. Eubanks alleged that the documents would prove that Getty had deceived the Board through the documents Getty had produced. In his antitrust complaint filed in federal district court, appellant alleged that:

> *[b]y submitting misleading information to the Board regarding the financial viability of the proposed unit and its geological make up and witholding financial and geological information necessary for the Board to make a reasoned decision as to whether or not the unitization of the Hatter's Pond Field was appropriate as proposed,* [appellees] knowingly and unlawfully did monopolize and attempt to monopolize a part of the trade and commerce in the relevant markets in violation of § 2 of the Sherman Act.
> (emphasis added).

In sum, the issues of fact underlying both Eubanks' due process claim and his antitrust claim were that Getty withheld material information from the Board and submitted misleading information to it. It is clear that although the suits present different legal claims, the factual issues to be litigated in appellant's present suit are identical to the factual issues already litigated in the earlier action. It is well established that "[t]he distinguishing feature of the doctrine of collateral estoppel is that it precludes in a second or subsequent suit the relitigation of fact issues actually determined in a prior suit *regardless of whether the prior determination*

was based on the same cause of action in the second suit." *James Talcott, Inc. v. Allahabad Bank, Ltd.*, 444 F.2d 451, 459 (5th Cir.1971), *cert. denied*, 404 U.S. 940, 92 S.Ct. 280, 30 L.Ed.2d 253 (1971) (emphasis in original).

B. *Actually Litigated*

[4] Under Alabama law, an issue is actually litigated for purposes of collateral estoppel if the judgment is not based on default, stipulation, or consent. *See AAA Equip. & Rental, Inc. v. Bailey*, 384 So.2d 107, 112 (Ala.1980). Eubanks' brief before the Alabama Court of Civil Appeals included a twenty-three page argument in support of his claim that his due process rights were violated when he was denied access to the disputed documents. The court, however, found that the information "[a]t most . . . would have been merely cumulative of [the] evidence supporting [Eubanks'] position that separate reserviors existed in the field." 510 So.2d at 256. The Alabama judgment was not based on default, stipulation, or consent, but instead, was based on an issue actually contested before the court. We must conclude, therefore, that the parties actually litigated whether the Getty documents were material and whether withholding these documents was improper.

The documents appellant seeks were not, of course, part of the Board record. Appellant claims that because the Alabama Court of Civil Appeals could not hear new evidence but instead was limited to the facts in the Board's record, the court could not actually litigate whether the documents in question should have been produced. It is clear from the record, however, that the court was apprised of the nature of the documents that appellant claims were withheld. The court also had access to the multitudinous volumes of documents that were submitted to the Board. We do not accept appellant's contention that the court could not review

the evidentiary support for the administrative decision without reviewing the specific documents themselves. Instead, we are of the opinion that the Alabama appellate court had an adequate record on the contents of the documents to reach an appellate decision as to the documents' materialty.

Appellant's brief before the Alabama Court of Civil Appeals also included an extensive discussion of whether the evidence supported the Board's order. The court held that the order "was supported by the evidence," the Alabama standard of review for this order. 510 So.2d at 254-55. Implicit in this holding is a finding that the evidence submitted to the Board by Getty was neither false nor misleading. Consequently, we must conclude that the parties actually litigated and the court actually decided that Getty did not prevail by submitting false and misleading information to the Board.

C. *Necessary to the Judgment*

The court of civil appeals reversed the Alabama Circuit Court's decision on two grounds. First, the court held that the Board's order was reasonable and supported by the evidence. Second, the court held that Eubanks' due process rights were not violated because the withheld documents were not material. These grounds both were essential to the judgment. The court could not have reached its conclusion on the due process ground absent a finding that the documents Eubanks sought were not material. Likewise, the court could not have held that the Board's order was supported by the evidence absent a finding that the evidence upon which the Board relied was neither false nor misleading. We hold, therefore, that these findings were necessary to the judgment.

III. *Conclusion*

The Alabama court has adjudicated that Getty did not submit false and misleading information to the Board and that the information Getty withheld was not material. This adjudication is preclusive of appellant's claim in the present suit that Getty "submitt[ed] misleading information to the Board . . . and with[held] financial and geological information necessary for the Board to make a reasoned decision. . . ." Appellant is collaterally estopped from re-litigating this issue, his only allegation of monopolizing conduct. He can not succeed in his antitrust claim based wholly upon these contentions already litigated. *See United States v. Grinnell Corp.*, 384 U.S. 563, 570-71, 86 S.Ct. 1698, 1703-04, 16 L.Ed.2d 778 (1966). The district court properly granted summary judgment for appellees.

AFFIRMED.

WEST KEY NUMBER SYSTEM

UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 89-3268

D.C. Docket No. CA-88-5037-"G"

U.S. COURT OF APPEALS
FILED
MAR 22 1990
GILBERT F. GANUCHEAU
CLERK
(stamp)

U.S. DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA
FILED
MAY 30 1989
(illegible)
(stamp)

BILLY RAY EUBANKS,
Plaintiff-Appellant,

versus

GETTY OIL COMPANY, ET AL.,
Defendants-Appellees.

Appeal from the United States District Court for the
Eastern District of Louisiana

Before CLARK, Chief Judge, RUBIN and WILLIAMS, Circuit Judges.

JUDGMENT

This cause came on to be heard on the record on appeal and was argued by counsel.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the District Court in this cause is affirmed.

IT IS FURTHER ORDERED that the plaintiff-appellant pay to the defendants-appellees the costs on appeal to be taxed by the Clerk of this Court.

March 22, 1990

ISSUED AS MANDATE: **MAY 29 1990**
(stamp)

A true copy
Teste
Clerk, U.S. Court of Appeals, Fifth Circuit
By s/s Sarah L. Holmes
Deputy
New Orleans, Louisiana
MAY 29 1990
(stamp)

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 89-3268

U.S. COURT OF APPEALS
FILED
MAY 17 1990
GILBERT F. GANUCHEAU
CLERK
(stamp)

BILLY RAY EUBANKS,
Plaintiff-Appellant,

versus

GETTY OIL COMPANY, ET AL.,
Defendants-Appellees.

Appeal from the United States District Court for the Eastern District of Louisiana

ON PETITION FOR REHEARING
(MAY 17, 1990)

Before CLARK, Chief Judge, RUBIN and WILLIAMS, Circuit Judges.

PER CURIAM:

IT IS ORDERED that the petition for rehearing filed in the above entitled and numbered cause be and the same is hereby denied.

ENTERED FOR THE COURT:

s/s J. S. Williams
United States Circuit Judge

CLERK'S NOTE:
SEE FRAP AND LOCAL
RULES 41 FOR STAY OF THE
MANDATE.
(stamp)

15 U.S.C. §2. ***Monopolizing Trade a felony; penalty.***

> Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by fine not exceeding one million dollars if a corporation, or, if any other person, one hundred thousand dollars, or by imprisonment not exceeding three years, or by both said punishments, in the discretion of the court.

Ala. Code §9-17-15. ***Judicial review of rules, regulations or orders.***

> Any interested person aggrieved by any rule, regulation or order made or promulgated by the board under this article and who may be dissatisfied therewith shall, within 30 days from the date of said order, rule or regulation was promulgated, have the right, regardless of the amount involved, to institute a civil action by filing a complaint in the circuit court of the county in which all or part of the aggrieved person's property affected by any such rule, regulation or order is situated to test the validity of said rule, regulation or order promulgated by the board. Such civil action shall be advanced for trial and be determined as expeditiously as feasible, and no postponement or continuance thereof shall be granted except for reasons deemed

imperative by the court. In such trials the validity of any rule, regulation or order made or promulgated under this article shall be deemed prima facie valid and the court shall be limited in its consideration to a review of the record of the proceedings before the board, and no new or additional evidence shall be received.

The reviewing court shall limit its consideration to the following:

(1) Whether the rule, regulation or order is constitutional;
(2) Whether the rule, regulation or order was without or in excess of jurisdiction;
(3) Whether the rule, regulation or order was procured by fraud;
(4) Whether the rule, regulation or order is reasonable; and
(5) Whether the rule, regulation or order is unsupported by the evidence.

Ala. Code §9-17-19. ***Civil actions for damages for violations of provisions of article, rules, etc.; actions by private parties to enjoin violations of provisions of article, rules, etc.***

(a) Nothing contained or authorized in this article and no civil action by or against the board and no penalties imposed or claimed against any person for violating any provision of this article or any rule, regulation or order

issued under this article and no forfeiture shall impair or abridge or delay any cause of action for damages which any person may have or assert against any person violating any provision of this article or any rule, regulation or order issued under this article. Any person so damaged by the violation may institute a civil action for and recover such damages as he may show that he is entitled to receive.

(b) In the event the board should fail to bring a civil action to enjoin any actual or threatened violation of any provision of this article or of any rule, regulation or order made under this article, then any person or party in interest adversely affected by such violation or threat thereof and who has requested the board to institute a civil action in the name of the state may, to prevent any or further violation, bring a civil action for that purpose in any court in which the board could have brought a civil action. If, in such civil action, the court holds that injunctive relief should be granted, then the state shall be made a party and shall be substituted by order of the court for the person who brought the action, and the injunction shall be issued as if the state had at all times been the complaining party.

(2)

No. 90-290

IN THE
Supreme Court of the United States
OCTOBER TERM, 1990

DR. BILLY RAY EUBANKS,

Petitioner,

v.

GETTY OIL COMPANY, TEXACO INC.,
AND TEXACO PRODUCING INC.,

Respondents.

RESPONSE TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF IN OPPOSITION

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September 15, 1990

QUESTION PRESENTED

Whether in applying Alabama law to the facts of this case, the Fifth Circuit properly found that collateral estoppel barred Petitioner from litigating for a second time his factual assertion that Respondents withheld material information from and gave misleading information to a state agency, which finding, when given its preclusive effect as required by the full faith and credit statute, 28 U.S.C. § 1738, foreclosed Petitioner from pursuing his purported federal antitrust case, where the prior state court finding had conclusively rejected the sole factual allegation of Respondents' monopolizing conduct stated in Petitioner's antitrust complaint.

LIST OF PARTIES

The parties to the proceedings below were the Petitioner, Dr. Billy Ray Eubanks, and the Respondents, Getty Oil Company, Texaco Inc., and Texaco Producing Inc. The same parties are the parties before this Court.

In addition, Texaco Inc. hereby lists affiliated corporate entities pursuant to Rule 29.1 as follows:

Four Star Oil and Gas Company
Texaco Cogeneration Company
Texaco Pipeline Inc.
Texaco Producing Inc.
Texaco Refining and Marketing Inc.
Texaco Refining and Marketing (East) Inc.
Texaco TPC Inc.
Texaco Trading and Transportation Inc.
Norsk Texaco Oil A/S
S.A. Texaco Belgium N.V.
Texaco A/S
Texaco Britain Limited
Texaco Denmark Inc.
Texaco Investments (Netherlands), Inc.
Texaco (Ireland) Limited
Texaco Limited
Texaco North Sea U.K. Company
Texaco Petroleum Maatschappij (Nederland) B.V.
Refineria Panama S.A.
Refineria Texaco de Honduras, S.A.
Texaco Brasil S.A. — Produtos de Petroleo
Texaco Caribbean Inc.
Texaco Nigeria Limited
Texaco Overseas (Nigeria) Petroleum Company
Texaco Panama Inc.
Texaco Petroleum Company
Texaco Puerto Rico Inc.
Texas Petroleum Company
Getty Oil Company
Texaco Chemical Company
Texaco International Trader Inc.
Texaco Overseas Holdings Inc.
Texaco Overseas Petroleum Company
TRMI Holdings Inc.

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TABLE OF AUTHORITIES

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STATUTES INVOLVED

Besides the statutes listed by Petitioner, 15 U.S.C. § 2, Ala. Code § 9-17-15, and Ala. Code § 9-17-19, Respondents also make reference to 28 U.S.C. § 1738, reproduced in the appendix hereto, p. A-1.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1990

DR. BILLY RAY EUBANKS,

Petitioner,

v.

GETTY OIL COMPANY, TEXACO INC.,
AND TEXACO PRODUCING INC.,

Respondents.

RESPONSE TO PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

BRIEF IN OPPOSITION

The Respondents, Getty Oil Company, Texaco Inc., and Texaco Producing Inc., respectfully request that this Court deny the petition for a writ of certiorari, seeking review of the Fifth Circuit's opinion in this case. That opinion is reported at 896 F.2d 960 (5th Cir. 1990).

STATEMENT OF THE CASE

In the opinion below, the Fifth Circuit assessed the collateral estoppel effect, under Alabama law, of an Alabama court's review of a state oil and gas agency order. Petitioner's predecessor-in-interest had challenged the agency order on the basis that Respondents allegedly had submitted misleading information to and withheld material information from the agency. The Alabama court rejected these challenges, finding that the allegations on which they were based were without merit. The Fifth Circuit found that the state court's findings were entitled to preclusive effect under Alabama's collateral estoppel rules. Following the dictates of the full faith and credit statute, 28 U.S.C. §1738, the Fifth Circuit held that Petitioner Eubanks was foreclosed from

pursuing a monopolization case that was premised solely on the identical factual contention rejected in the prior state court proceedings. The dismissal of Eubanks' antitrust case by the district court was accordingly affirmed.

The facts of this case and the prior state court case arise out of gas producing operations at the Hatter's Pond gas field in Alabama. (These identical facts also constituted the basis for a certiorari petition in the prior state court case advanced by Petitioner and others to this Court, which was denied. *Anderson* v. *State Oil and Gas Board*, 484 U.S. 955, 108 S.Ct. 348, 98 L.Ed.2d 374 (1987).) Getty Oil Company ("Getty") discovered gas and gas condensate on its property near Mobile, Alabama, in 1974. The field is relatvely large and geologically complicated.

By 1982, Getty believed that the injection of gas back into the field could push out gas condensate that otherwise would be left in the ground. To get permission to undertake these enhanced recovery operations, Getty filed the required petition with the Alabama State Oil and Gas Board ("Board"), requesting that the field be unitized prior to implementation of secondary recovery. (Unitization in Alabama is the typical state-ordered procedure whereby a unit operator is designated to conduct secondary recovery and producing operations for all the other owners. Production from field-wide operations is shared among the owners pursuant to a participation formula set by the Board after investigation and hearings). Amax Petroleum Corporation ("Amax"), Petitioner's predecessor-in-interest, opposed Getty's plan.

After the hearings on Getty's initial proposal for the Hatter's Pond Field, the Board found that the Hatter's Pond Field should be unitized, but rejected the specific plan proposed by Getty. Among other things, the Board directed a new geographic area and a new participation formula for the unit.

Getty filed a new unitization proposal incorporating the Board's instructions. The Board held further hearings during which Amax and other parties expressly charged that Getty's information disclosures were improper and moved to compel further disclosure. Among the particular documents Amax

sought were certain of Getty's confidential internal interpretative evaluations. Getty voluntarily made underlying information, raw data, and even physical evidence such as the core samples from the drilling operations available, but withheld the interpretative reports. Moreover, as operator of 12 of the 13 producing wells in the field, Getty had already provided thousands of pages of documents to the Board and the other owners over a period of nine years constituting the raw data accumulated during its producing operations from which geologists and petroleum engineers (including those of other owners and those on the expert staff of the Board) could evaluate the field.

In 1984, the Board entered its final unitization order for the Hatter's Pond Field, and made findings which reviewed the nine years of information that had been analyzed by its expert staff, which confirmed Getty's second submissions, and which rejected the materiality of the documents withheld by Getty. These findings included, *inter alia,* the following:

> "Sufficient data are now available, and the consideration of any additional production, pressure, and operating data from the Hatter's Pond Field is not necessary for the field to be unitized in a fair and equitable manner."
>
> * * *
>
> "That requests for discovery . . . were voluntarily complied with by Getty Oil Company and all parties involved in those proceedings were given full and complete rights to examine and cross-examine all witnesses in those proceedings and to call any persons as witnesses whom they desired to call."
>
> * * *
>
> "That the Board has been provided with ample information and sufficient data to make a decision on the Petitions presently before it."
>
> * * *

"That voluminous amounts of information and data have been produced during these hearings . . . and the previous hearings . . . , and all parties involved in all these proceedings have been afforded an opportunity to examine all pertinent information and data relating to the unitization of the Hatter's Pond Field."

* * *

"The information that Getty Oil Company refused to provide these parties is not necessary to determine the issues presented before the Board."

* * *

"[T]o the extent not already complied with, the discovery requests of . . . Amax Petroluem Corporation are unreasonable, untimely, will result in waste, and will not protect the coequal and correlative rights of all the mineral interest owners in the proposed Hatter's Pond Field Unit."

Amax and certain other property owners thereafter commenced suit in Alabama state court, challenging the Board's unitization order and contending that Getty's disclosures were improper. They further alleged that misleading disclosures and nondisclosures by Getty caused the Board to order an improper unitization, and amounted to fraud. The state court specifically rejected the contention of Amax that Getty had perpetrated a fraud, but nonetheless reversed the Board's unitization order and remanded for further consideration certain aspects of the Board's order.

Getty appealed to the Alabama appellate court. *State Oil and Gas Board* v. *Anderson*, 510 So.2d 250 (Ala. Civ. App. 1987), *cert. denied*, Alabama Supreme Court, *Id.* (1987), *cert. denied*, *Anderson* v. *State Oil and Gas Board*, 484 U.S. 955, 108 S.Ct. 348, 98 L.Ed.2d 374 (1987). Amax had cross-appealed, asserting once again that Getty's disclosures were inadequate and misleading. The Alabama appellate court reversed, finding no merit to Amax's claims, sustaining the Board's order based on

Getty's submissions, and rejecting the claim that the withheld information was material or necessary to the Board's decision. It held that the Board's decision was reasonable and based on substantial evidence. 510 So.2d at 255-57.

Petitions for certiorari were sought from the Alabama Supreme Court and from this Court. Both petitions were denied. *Id.*, 510 So.2d 250; 484 U.S. 955, 108 S.Ct. 348, 98 L.Ed.2d 374 (1987). Petitioner Eubanks commenced this federal antitrust case in 1988 in the Eastern District of Louisiana. In March 1989, the district court granted summary judgment to Respondents based on the collateral estoppel effect of the prior state court findings. In March 1990, the Fifth Circuit affirmed.

REASONS WHY THE PETITION SHOULD BE DENIED

A quick glance at Petitioner's first paragraph suggests to the reader that the opinion below was an aberrational "could have been litigated" case under wrongly applied res judicata principles. Dr. Eubanks' focus on res judicata jurisdictional competency principles is inappropriate. The opinion below is not about res judicata or what causes of action might have been entertained by the state courts in the prior proceeding. This case is about collateral estoppel, whereunder irrespective of what causes of action could have been litigated before, the facts established in prior proceedings are given preclusive effect.

This Court, moreover, has already determined that the preclusive effect of properly determined issues can extend from the state courts to the federal courts, even where collateral estoppel forecloses pursuit of a claim exclusively within the jurisdiction of the federal courts. *Becher* v. *Contoure Laboratories, Inc.*, 279 U.S. 388, 49 S.Ct. 356, 73 L.Ed. 752 (1929), *reaffirmed on point by, Marrese* v. *American Academy of Orthopaedic Surgeons*, 470 U.S. 373, 380, 105 S.Ct. 1327, 84 L.Ed.2d 274, *reh. denied*, 471 U.S. 1062, 105 S.Ct. 2127, 85 L.Ed 2d 491 (1985). Accordingly, it is wrong to state, as Petitioner does, that the Fifth Circuit committed "serious error" (Pet. at 6). As detailed below, the case 1) is neither wide-ranging in impact regardless of who wins nor important in its legal

precepts (which are based primarily on settled state law), 2) conflicts with no decision of any other circuit, 3) is controlled by existing Supreme Court precedent, and 4) was properly decided by the Fifth Circuit and contains none of the novelty suggested by Petitioner's imprecisely-worded question presented. The request for a writ of certiorari is due to be denied.

1. This is a case which relies heavily on its own particular facts, and it is unlikely to affect anyone beyond the parties.

This is an unremarkable case which presents no significant question of unsettled law requiring this Court's attention, and it involves no broad-ranging effect on anyone other than the parties. The Fifth Circuit applied well-settled Alabama law governing the application of collateral estoppel for findings of Alabama courts, *see, Timmons* v. *Central Bank of the South,* 528 So.2d 845, 847 (Ala. 1988), as required by the full faith and credit statute, 28 U.S.C. § 1738. *Migra* v. *Warren City School District Board of Education,* 465 U.S. 75, 81, 104 S.Ct. 892, 79 L.Ed 2d 56 (1984).

Collateral estoppel determinations under Alabama law are heavily dependent upon the facts and circumstances of the particular case. So it was here. Practically the entire analysis of Alabama's collateral estoppel elements by the Fifth Circuit involved considerations of the facts of the two cases. There is no suggestion by Petitioner that the Fifth Circuit misread Alabama law. The only legal issue framed by the Petitioner—whether state court findings can foreclose pursuit of a claim within the exclusive jurisdiction of the federal courts—has been squarely settled by this Court in Respondents' favor in *Becher* v. *Contoure Laboratories.*

Nor are any parties beyond the Petitioner and the Respondents likely to be affected by the outcome of this case regardless who wins. The case surrounds operations at only one, albeit large, gas field. Other interest owners in the Hatter's Pond Field have neither intervened in this case nor brought their own cases. No other commercial entities or businesses are impacted by this case. When stripped of its legal rhetoric, this dispute is really

nothing more than the continued fight over the Hatter's Pond unit sharing formula carried on between property owners.

2. There are no conflicts among the circuits in the decisions cited by Petitioner.

Dr. Eubanks suggests that the decision of the Second Circuit in *Lyons* v. *Westinghouse Electric Corp.*, 222 F.2d 184 (2nd Cir.), *cert. denied sub nom., Walsh* v. *Lyons*, 350 U.S. 825, 76 S.Ct. 52, 100 L.Ed 737 (1955), posed an "especial" conflict with the Fifth Circuit's decision below. This statement by the Petitioner is incorrect. In *Lyons*, the state court in New York was presented with a defense to a contract action which encompassed an entire federal antitrust claim. A state court decision in that context, it was argued, would have been a res judicata bar and merger of any subsequent federal antitrust claim if the defense succeeded. The Second Circuit found that such a bar and merger resulting from a state court decision on the merits and full facts of the antitrust defense would be an impermissible intrusion upon the exclusive jurisdiction of the federal courts over the federal antitrust laws.

The differences from the case at bar are readily apparent; the Alabama courts were not confronted with the litigation of an entire federal antitrust claim or its complete body of underlying facts, or anything denominated as an antitrust claim. Thus, there could be no unwarranted intrusion on the federal court's exclusive jurisdiction by the application of collateral estoppel here of the sort *Lyons* sought to prevent. Furthermore, in writing the decision on the rehearing for the Second Circuit, Judge Hand distinguishes the *Lyons* case from the case which controls the issue herein, *Becher* v. *Contoure Laboratories*, noting that the "immunity" provided by the exclusive grant of federal jurisdiction over antitrust cases from prejudgment in the state courts is limited:

> *[Becher]*, to say nothing of our own [decision] which it affirmed, would, I believe, make the specific findings of fact of the state court, had there been any, estoppels in this action, even though the result were to put an end to the

> plaintiffs' claim. I concede that in effect this means that the exclusive jurisdiction of the federal court under §15 may be impaired by a state judgment; and that the immunity which that section grants is limited to judgments of state courts that except for that immunity would be bars or mergers [i.e. res judicata]. I cannot read *[Becher]* in any other way. . . .

222 F.2d at 196.

There is little doubt that the Second Circuit, if faced with the facts in the opinion below here, would follow Judge Hand's analysis of *Becher*, and apply collateral estoppel effect to a state court finding on a single element of an antitrust claim regardless of the exclusive jurisdiction of the federal courts over federal antitrust claims.

Dr. Eubanks also suggests that there is a conflict between the opinion of the Fifth Circuit below and that of the Eighth Circuit in *Richardson* v. *Phillips Petroleum Co.*, 791 F.2d 641 (8th Cir. 1986), *reh. denied*, 799 F.2d 426, *cert. denied*, 479 U.S. 1055, 107 S.Ct. 929, 93 L.Ed. 2d 981 (1987). Besides the fact that different States' laws are being applied (rendering a conflict almost an impossibility), there is no conflict between the opinion below and *Richardson*. *Richardson* is distinguishable on its facts and it would not be the controlling Eighth Circuit decision if the facts presented here were confronted by the Eighth Circuit.

In *Richardson*, plaintiffs filed a petition with the Arkansas Oil and Gas Commission, seeking injunctive relief to stop defendants from violating a pre-existing order of the Commission. The Commission found that the plaintiffs had failed to prove that they had been irreparably harmed, and refused to issue the injunction. The Arkansas state court affirmed. Thereafter, plaintiffs brought a tort action for damages in federal court, where, on appeal, the Eighth Circuit refused to give collateral estoppel effect to the Commission's findings and allowed the damages action to proceed.

The fundamental bases of the opinion below and *Richardson* are very different. In *Richardson,* the prior state case was a request for an injunction before the agency which found no irreparable harm resulting from a violation of a pre-existing agency order. As the Eighth Circuit found, the "damages" element in the tort case was a different issue from the "irreparable harm" issue before the agency in a request for an injunction. 791 F.2d at 646. *See, also, Richardson,* 799 F.2d at 427 (reiteration by Eighth Circuit of irreparable harm versus damages distinction present in that case on denial of rehearing). The Eighth Circuit's determination that the issues were not the same under Arkansas law is apparently nothing more remarkable than recognition of the principle that an adequate remedy at law may be pursued if injunctive relief is denied.

Here, the issues in the prior proceedings were challenges to the core of the agency's decision-making on unitization; was material evidence withheld and was misleading evidence given to the agency. No pre-existing orders or violations were at issue, but rather, the validity of the Board order. Relitigating the core evidentiary considerations underlying the agency order in the antitrust case (where part of the relief sought by Petitioner was the redrawing of the unit map and the unit sharing formula) would, in fact, force an avoidance of a state agency order previously validated by the state courts. Because the issues in *Richardson* did not go to the heart of agency proceedings, *Richardson* is substantially different from this case.

Indeed, the Eighth Circuit, when confronted with a case such as that presented to the Fifth Circuit here, ruled as did the Fifth Circuit in giving preclusive effect to findings which, if relitigated, might force an avoidance of valid agency orders. In *Katter* v. *Arkansas Louisiana Gas Co.,* 765 F.2d 730 (8th Cir. 1985), *cited with approval in, Richardson,* 791 F.2d at 646, the Eighth Circuit gave preclusive effect to prior state proceedings where the relief sought was the undoing of the prior state action.

Accordingly, under proper Eighth Circuit precedent, Eubanks would be estopped as he was by the Fifth Circuit here.[1]

Dr. Eubanks also suggests that the Tenth Circuit's decision in *Tidewater Oil Co.* v. *Jackson*, 320 F.2d 157 (10th Cir.), *cert. denied*, 375 U.S. 942, 84 S.Ct. 347, 11 L.Ed.2d 273 (1963), conflicts with the decision below. *Tidewater* is distinguishable on its facts and because it was based on Kansas law. The Tenth Circuit found that collateral estoppel could be based on judicially-reviewed administrative findings. 320 F.2d at 161. Nevertheless, in applying the collateral estoppel rules under Kansas law to that case, the Tenth Circuit determined that the issue in the subsequent federal lawsuit had not actually been litigated in the prior state court lawsuit:

> [T]he order of the Commission did not purport to determine the issues involved in this case, and did not therefore, work an estoppel . . . .

320 F.2d at 162.

---

[1] Eubanks' suggestion, that because the Alabama statutory scheme is like the Arkansas statutes a damages action should be allowed to proceed under Alabama law, is irrelevent. The Alabama statute cited by Eubanks, Ala. Code § 9-17-19, does not purport to change the collateral estoppel effect of judgments, decisions, or findings by Alabama courts reviewing the validity of Board orders; it merely says that the existence of an action by or against the Board shall not stop the bringing of a private damages action when violations of existing orders are asserted. It does not state that findings of a proper court establishing the validity of a challenged order can be relitigated despite Alabama collateral estoppel rules. The validity of Board orders can be tested only under Ala. Code § 9-17-15, see, *Whitney National Bank* v. *Bank of New Orleans*, 379 U.S. 411, 422, 85 S.Ct. 551, 13 L.Ed.2d 386 (1965), and they must have settled validity once challenged.

As for Alabama's collateral estoppel law, Alabama law does not require the jurisdictional competence of the prior tribunal over the subject matter in the subsequent case in order to apply collateral estoppel to issues properly litigated in the prior case. See *Timmons*, 528 So.2d. 845 (findings from a prior divorce action binding in a subsequent commercial damages case), and *Partlow* v. *Partlow*, 246 Ala. 259, 20 So.2d 517 (1945) (Alabama courts rendering divorces have limited jurisdiction and powers).

In this case, it is irrefutable that the prior state proceeding did adjudicate the precise issue which the Petitioner alleges as the monopolizing conduct in the subsequent federal case. The Fifth Circuit so found. 896 F.2d at 962. The fact determinations on this point distinguish *Tidewater* from the opinion below.

3. This case is controlled by existing Supreme Court precedent.

The issue arising in this case is controlled by *Becher* v. *Contoure Laboratories, Inc.*, 279 U.S. 388, 49 S.Ct. 356, 73 L.Ed. 752 (1929). The respondents were pursuing an action in New York Supreme Court based on breach of contract and wrongful disregard of confidential relations, both claims properly before the state tribunal. In the subsequent federal patent infringement case, the parties disputed whether facts established in the state court case could be given collateral estoppel effect in the federal patent lawsuit, because, if so recognized, such facts would have the effect of invalidating the patent. It was argued in *Becher* that because the validity of the patent was an issue exclusively within the jurisdiction of the federal courts, the state court findings should not be given preclusive effect (the identical argument proffered by Petitioner Eubanks here with respect to the antitrust laws).

This Court disagreed, holding:

> That decrees validating or invalidating patents belong to the courts of the United States does not give sacrosanctity to facts that may be conclusive upon the question in issue. A fact is not prevented from being proved in any case in which it is material, by the suggestion that if it is true an important patent is void . . .
>
> [W]e can see no ground for giving less effect to proof of such a fact than to any other. A party may go into a suit estopped as to a vital fact by covenant. We can see no sufficient reason for denying that he may be equally estopped by judgment.

279 U.S. at 391-92.

The clear logic of *Becher* is compelling; facts litigated in a proper case can estop a party from trying to prove or disprove their existence in subsequent litigation, regardless of the causes of action involved. *Talcott* v. *Allahabad Bank, Ltd.*, 444 F.2d

451, 463 (5th Cir.), *cert. denied sub nom., City Trade & Indus., Ltd.* v. *Allahabad Bank, Ltd.*, 404 U.S. 940, 92 S.Ct. 280, 30 L.Ed.2d 253 (1971) ("collateral estoppel . . . precludes in a second or subsequent suit the relitigation of fact issues actually determined in a prior suit *regardless of whether the prior determination was based on the same cause of action in the second suit.*") (emphasis in original). As *Becher* teaches, this general principle is applicable even where a state court finding works to preclude a claim within the exclusive jurisdiction of the federal courts.

This Court recently confirmed the principle enunciated in *Becher* in its *Marrese* decision. State court decisions can "have preclusive effect in a subsequent action within the exclusive jurisdiction of the federal courts" such as those arising under the federal antitrust statutes. 470 U.S. at 380. The full faith and credit statute so dictates. Thus, *Becher* controls this case, and mandates that a single finding by a state court be given preclusive effect on a subsequent claim made under the antitrust laws even though those laws are within the exclusive jurisdiction of the federal courts. There is no reason why a single factual element of an antitrust case should be relitigated if it has already been determined in prior state court litigation. Such a state court finding should be given its rightful preclusive effect. To do otherwise would severely undermine the respect to be accorded Alabama court decisions pursuant to 28 U.S.C. § 1738.

4. The Fifth Circuit correctly applied this Court's directives concerning 28 U.S.C. § 1738.

In *Marrese*, this Court directs the circuit courts to "rely in the first instance on state preclusion principles to determine the extent to which an earlier state judgment bars subsequent litigation." 470 U.S. at 382. That is, of course, precisely what the Fifth Circuit did below. In an in-depth analysis of each of the components of Alabama's collateral estoppel rules, the Fifth Circuit meticulously reviewed whether the elements were met. It is this sort of analysis which this Court contemplated for applications of 28 U.S.C. § 1738.

Based upon this element-by-element analysis, the Fifth Circuit concluded that the sole allegations of monopolizing conduct in the antitrust case were indeed the precise "facts" litigated and decided against Eubanks in the prior state court case. Under Alabama collateral estoppel rules, it has been conclusively and completely decided that the information submitted by Getty was reasonable and that the information withheld by Getty was not material or necessary to the Board's decision. No legal theory can be impressed upon assertions of "facts" to the contrary. The Fifth Circuit's holding is simply unexceptional.

Petitioner's attempts to avoid controlling precedent and to suggest that the Fifth Circuit's decision is a novelty are unfounded. *Becher* nowhere appears in the petition. Instead, a meaningless jurisdictional competency argument under irrelevant res judicata rules is advanced. As we noted earlier, this is not an aberrational "could have been litigated" res judicata case; it is a "fact was decided" collateral estoppel case.

Despite the imprecise wording of the question presented which suggests that an agency finding is given preclusive effect, the facts are that a court decision reviewing an agency order is being given preclusive effect. This is not novel, not even for the Fifth Circuit. *See e.g., Holmes* v. *Jones,* 738 F.2d 711 (5th Cir. 1984) (Mississippi state court decisions affirming action of school board act as collateral estoppel to foreclose relitigation of facts in subsequent federal suit); *Cornwell* v. *Ferguson,* 545 F.2d 1022, *reh. denied,* 548 F.2d 355 (5th Cir. 1977); *Jennings* v. *Caddo Parish School Board,* 531 F.2d 1331 (5th Cir.), *cert. denied,* 429 U.S. 897, 97 S.Ct. 260, 50 L.Ed.2d 180 (1976). Even if an agency finding were being accorded preclusive effect, it would be no novelty to the precedents of this Court. *See, e.g., United States* v. *Utah Construction & Mining Co.,* 384 U.S. 394, 86 S.Ct. 1545, 16 L.Ed.2d 642 (1966).

CONCLUSION

It is respectfully submitted that the petition for a writ of certiorari should be denied.

Respectfully submitted,

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APPENDIX

UNITED STATES CODE, TITLE 28

§ 1738. State and Territorial Statutes and judicial proceedings; full faith and credit.

The Acts of the legislature of any State, Territory, or Possession of the United States, or copies thereof, shall be authenticated by affixing the seal of such State, Territory or Possession thereto.

The records and judicial proceedings of any court of any such State, Territory or Possession, or copies thereof, shall be proved or admitted in other courts within the United States and its Territories and Possessions by the attestation of the clerk and seal of the court annexed, if a seal exists, together with a certificate of a judge of the court that the said attestation is in proper form.

Such Acts, records and judicial proceedings or copies thereof, so authenticated, shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken.